IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 41 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

YOGESH PANDITRAO PATIL

Versus

COMMISSINER OF POLICE BARODA CITY

Appearance:

1. Special Civil Application No. 41 of 2002

MS DR KACHHAVAH for Petitioner No. 1

MR SS PATEL, AGP, for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/02/2002

ORAL JUDGEMENT

1. The petitioner has been detained by an order passed by the Commissioner of Police, Baroda City, Baroda, on the November 11, 2001, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short).

2. The detaining authority took into consideration three offences registered against the petitioner, so also the statements of three anonymous witnesses. The detaining authority considered the activities of the detenu as that of a bootlegger and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Ms. Kachhavah, learned advocate appearing for the petitioner, contended that a representation on behalf of the detenu was made on the December 14, 2001, which came to be rejected on December 26, 2001. The rejection was communicated on December 31, 2001. Hence, there is delay in considering the representation and communicating the decision thereon. Ms. Kachhavah places on record a xerox copy of the communication received from the Government intimating rejection of the representation and the original acknowledgement slip. She submitted that this has affected the right of the detenu of making an effective representation and, therefore, the continued detention is vitiated. She, therefore, urged that the petition may be allowed and the order of detention may be quashed and set aside.

4. Mr. Patel, learned Assistant Government Pleader, has opposed this petition. Affidavits in reply are filed on behalf of the Government and the detaining authority.

5. Having regard to rival side contentions, petition deserves to be allowed on the ground that there is delay in considering the representation of the detenu. As can be seen from the acknowledgement slip, the representation was received by the Government on 15.12.2001 and it was rejected on 26.12.2001, as is evident from the communication as well as the affidavit-in-reply sworn in by the Under Secretary to the Government of Gujarat, Home Department. The affidavit, however, states that the representation was received by the PASA Section of Home Department on the 20th December, 2001. There is absolutely no explanation coming from the respondents as to what happened to the representation for the period between the 15th December 2001 and the 20th December, 2001. An attempt is made to explain the period between the 20th December, 2001 and the 26th December, 2001, but

after rejection on the 26th December, 2001, it was communicated on the 31st December, 2001 and an unsuccessful attempt is made to explain this time gap. Admittedly, the communication was sent by the concerned Section Officer on the 28th December, 2001. It was, however, despatched on the 31st December, 2001. The time gap is sought to be explained by stating that the 30th December, 2001 was a holiday. No explanation is coming for the 29th December, 2001. As such, this Court is satisfied that the representation was not expeditiously considered as expected, although it was received on the 15th December, 2001, till the 26th December, 2001. The time gap between the 15th December, 2001 and the 20th December, 2001 is not explained. This would infringe the right of the detenu of making an effective representation. Therefore, the continued detention would be vitiated as held by this Court in the case of Anubhai M. Jani v. State of Gujarat, 2000(3) GLR 649. The petition, therefore, deserves to be allowed.

6. In the result, the petition is allowed. The impugned order of detention dated the 9th November, 2001, passed against the detenu is hereby quashed. The detenu-Yogesh Panditrao Patil is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

7. Direct service is permitted.

[A.L. DAVE, J.]

gt